

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Community word mark 'TORRES 10' for goods in Class 33 (No 466896) and numerous other Community, national and international trade marks

Decision of the Opposition Division: Opposition upheld and application for registration of the mark refused

Decision of the Board of Appeal: Appeal upheld, annulment of the contested decision and rejection of the opposition

Pleas in law: Infringement of Article 8(1) (b) of Regulation (EC) No. 40/94 ⁽¹⁾ in that there is a likelihood of confusion of the conflicting marks

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trademark (OJ L 11, 1994, p. 1).

Proprietor of the Community design: PepsiCo, Inc.

Party requesting the declaration of invalidity of the Community design: The applicant

Design of the party requesting the declaration of invalidity: Registered Community design for 'metal plate[s] for games' — Community Design No 53186-1

Decision of the Invalidity Division: Declaration of invalidity of the Community design

Decision of the Board of Appeal: Annulment of the Invalidity Division's decision and dismissal of the application for a declaration of invalidity of the registered Community design

Pleas in law: The contested Community Design No 74463-1 lacks novelty and individual character compared to the registered Community Design No 53186-1, which has claimed priority of an earlier Spanish design.

Action brought on 9 January 2007 — Grupo Promer Mon-Graphic v OHIM — PepsiCo (Designs)

(Case T-9/07)

(2007/C 56/66)

Language in which the application was lodged: English

Parties

Applicant: Grupo Promer Mon-Graphic, SA (Sabadell, Spain) (represented by: R. Almaraz Palmero, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: PepsiCo, Inc. (New York, USA)

Form of order sought

— Annulment of the decision of the Third Board of Appeal at OHIM of 27 October 2006 in Case R 1001/2005-3;

— order the Office for the Harmonisation in the Internal Market (OHIM) and the intervening party, Pepsico Inc., to pay all the costs of the dispute before the Court of First Instance, including those relating to the procedure before the Third Board of Appeal.

Pleas in law and main arguments

Registered Community design subject of the application for a declaration of invalidity: Registered Community design for 'promotional item[s] for games' — Community Design No 74463-1

Action brought on 8 January 2007 — FVB v OHIM — FVD (FVB)

(Case T-10/07)

(2007/C 56/67)

Language in which the application was lodged: German

Parties

Applicant: FVB Gesellschaft für Finanz- und Versorgungsberatung mbH (Osnabrück, Germany) (represented by: P. Koehler, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal of OHIM: FVD Gesellschaft für Finanzplanung und Vorsorgemanagement Deutschland mbH

Form of order sought

— Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in appeal case R 1343/2005-4 of 6 November 2006 so as to annul the decision of 12 September 2005 on opposition No B 549 362 of the Finanz- und Versorgungsdienstgesellschaft für Finanzberatung und Vorsorgemanagement mbH against application No 2 126 175 and to reject the opposition;

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'FVB' for services in Classes 35 and 36 (Application No 2 126 175).

Proprietor of the mark or sign cited in the opposition proceedings: FVD Gesellschaft für Finanzplanung und Vorsorgemanagement Deutschland mbH.

Mark or sign cited in opposition: The German word mark 'FVD' for services in Class 36, the opposition being brought against the registration in Class 36.

Decision of the Opposition Division: Opposition granted, partial rejection of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾ since there is no likelihood of confusion between the opposing marks.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 1994, p. 1).

Action brought on 12 January 2007 — Frucona Košice v Commission

(Case T-11/07)

(2007/C 56/68)

Language of the case: English

Parties

Applicant: Frucona Košice a.s. (Košice, Slovak Republic) (represented by: B. Hartnett, O. Geiss, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul Commission's Decision C(2006)2082 final, of 7 June 2006, in state aid Case No C25/2005;
- annul in whole or in part Article 1 of the said decision;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By means of its application, the applicant seeks annulment of the Commission decision of 7 June 2006 on state aid imple-

mented by the Slovak Republic for the applicant (C25/2005), insofar as it treats the applicant as a recipient of incompatible state aid and compels it to repay to the Slovak Republic the entirety of the tax write-off with interest.

In support of its action, the applicant relies on the following ten pleas in law:

By its first plea, the applicant claims that the Commission manifestly erred when determining the amount of the alleged state aid.

By its second plea, the applicant submits that the contested decision violates an essential procedural requirement and fails to have regard to Article 33 EC. In fact, the applicant contends it is DG Agriculture and not DG Competition which was the competent directorate to carry out the investigation and take the procedural and formal steps that led to the contested decision.

By its third plea, the applicant further submits that the contested decision violates Section 3, Annex IV of the Treaty of Accession, Article 253 EC, Article 88 EC and Regulation 659/1999 because the Commission lacked jurisdiction to issue the contested decision.

By its fourth plea, the applicant contends that the Commission has erred in fact and in law in applying Article 87(1) EC when it found bankruptcy proceedings to be more favourable than the tax settlement.

By its fifth plea, the applicant alleges that the Commission further erred by finding the tax execution procedure to be more beneficial than the tax settlement.

By its sixth plea, the applicant submits that the Commission manifestly erred in law and in fact by failing to discharge the burden of proof thereby violating Article 87(1) EC and Article 253 EC. In addition, the applicant submits that the Commission disregarded the legal standards set forth by the Court on the application of the private creditor test.

By its seventh plea, the applicant claims that the Commission erred in law and fact by failing to adequately assess and have regard to the evidence at its disposal.

By its eighth plea, the applicant alleges that the Commission erred in law and in fact by taking into account irrelevant evidence such as internal differences within the tax administration.

By its ninth plea, the applicant further submits that the decision violates Article 253 EC by lacking sufficient reasoning to justify its conclusions.

Lastly, by its tenth plea, the applicant alleges that the Commission erred by not exempting the tax settlement as restructuring aid and by retroactively applying the 2004 Restructuring Guidelines.